STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

APPLICATION OF HILCORP ENERGY COMPANY TO AMEND THE WELL DENSITY AND LOCATION REQUIREMENTS AND ADMINISTRATIVE EXCEPTIONS OF THE SPECIAL RULES FOR THE BLANCO-MESAVERDE GAS POOL, RIO ARRIBA AND SAN JUAN COUNTIES, NEW MEXICO. **Case No. 16403**

HILCORP'S RESPONSE IN OPPOSITION TO NMSLO'S REQUEST FOR REHEARING

Hilcorp Energy Company ("Hilcorp") hereby objects to the request for rehearing filed by the New Mexico State Land Office ("NMSLO"). The NMLSO is not a party to this proceeding and therefore cannot file for a rehearing under NMAC 19.15.4.25. *See also* NMSA 1978, §70-2-25. Further, the NMSLO's arguments for discretionary intervention as a party were considered by the Commission at the November 19th hearing. Nothing new is presented by the NMSLO, just a rehashing of the arguments considered by the Commission at the November 19th hearing.

The NMSLO acknowledges that under Commission rules, notice of these types of hearings is only provided to "division-designated operators" in the affected pool and formation. *See* Motion at ¶11 (citing NMAC 19.15.4.12(A)(4)(b)). After reviewing the entire record in this matter, the Commission further found that:

> 19. Hilcorp provided notice of the Commission hearing in this matter to all Division-designated operators in the Blanco-Mesaverde Pool and of wells within the same formation as the pool and within one mile of the pool's outer boundary that have not been assigned to another pool. The Commission provided notice pursuant to 19.15.4.9 NMC. Accordingly, all notice required by Commission rules was properly provided. *See* 19.15.4.12(A)(4)(b) NMAC.
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> 20. A courtesy notice of Hilcorp's Application and the initial Commission hearing in this matter was also provided to the Bureau of Land Management and the New

> Mexico State Land Office. Under Commission rules and prior precedent, neither agency is entitled to formal notice of this type of proceeding and neither of these agencies chose to appear before the Commission, which contains a representative from the New Mexico State Land Office.

See Order R-10987-A(2) at p. 5. *See also* Hilcorp Ex. 6 (last paragraph); Tr. 9/13/18 at p. 56-57. The NMSLO offers no evidence to suggest it did not receive the "courtesy notice" letter introduced as Hilcorp Exhibit 6 nor can it suggest it was unaware of the Commission proceedings since the NMSLO has an appointee on the three-member Commission panel.[1]

Nonetheless, the NMSLO suggests it "should" have received formal notice as a party of Hilcorp's application because it is "one of the largest" surface and mineral owners in the affected pool. *See* Motion at ¶12. However, what the current NMSLO believes "should" be the case is a matter for future rule-making, not for deciding this request for rehearing. Prior Commissions, with the NMSLO appointee in agreement, enacted and re-codified the rules providing that only "division- designated operators" are entitled to notice as a party to these types of proceedings. These prior Commissions, like this Commission today, concluded notice is not required to the NMSLO, the BLM, the U.S. Forest Service, the Bureau of Indian Affairs, Tribal agencies, other governmental landowners, or to any other "large" surface or mineral owners when oil and gas pool management issues are brought before the Commission. Instead, the NMSLO representative and the other members of the Commission determined long ago that party status should only be afforded only to operators in the pool or formation since they are the affected parties. Notice and party status are governed by these long-standing Commission rules, not by the current whims of the NMSLO.

[1] The NMSLO also does not dispute that it received Hilcorp's prehearing statement with a second courtesy notice by email from Hilcorp's counsel a week before the Commission's second hearing in this matter.

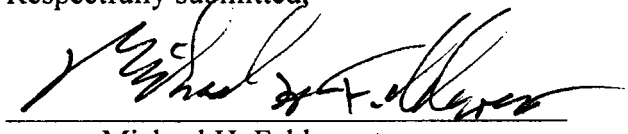
As for the NMSLO's complaint that it was not allowed to intervene as a party in this case, that is purely a matter of discretion by the Commission. Despite knowledge of the Commission proceeding as early as August, the NMSLO chose not to appear separately from its representative on the Commission at the September 13th hearing. It was not until the November 19th hearing that the NMSLO suddenly appeared with an oral request to intervene as a party. *See* Tr. 11/19/18 at p. 172. No written motion was filed by the NMSLO as required by NMAC 19.15.4.11. The full Commission, including the NMSLO representative on the Commission, considered the NMSLO's late request and denied it. This matter of discretion vested with the Commission is not subject to legal challenge and the NMSLO offers no new arguments to support any reconsideration of that discretionary decision. Rather, the NMSLO stoops to a new low of personally challenging the integrity of the EMNRD Cabinet Secretary Ken McQueen, the Oil Conservation Division Director Heather Riley, and the long-time attorney for the Commission Bill Brancard. *See* Motion at ¶ 36-37. These unsubstantiated allegations of "bias," "conflict of interest" and "impropriety" are not only insulting but reflect the absence of any substance to the NMSLO's motion.

The only new assertions made by the NMSLO are vague allegations that the Commission violated the "Open Meetings Act" in holding hearings and issuing its order in this case. Yet the NMSLO fails to articulate what violation occurred in these proceedings. Instead, the NMSLO merely cites Section 10-15-1(D) of that Act (the annual determination of the reasonable public meeting notice) and alleges the absence of a resolution on this annual determination from the Commission record in January of 2018. At no point does the NMSLO offer any basis to suggest that the September and November Commission hearings in this matter lacked "reasonable notice to the public." NMSA 1978, § 10-15-1. Rather, the extensive public comment provided at both

the September and November hearings clearly reflect that reasonable public notice was provided. Moreover, the NMSLO's vague allegations do not overcome the statutory presumption that the Commission hearings met the reasonable public notice requirements. *See* NMSA 1978, §10-15-3(A) (Commission action "shall be presumed to have been taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978.").

WHEREFORE, Hilcorp Energy Company respectfully requests that motion for rehearing filed by non-party NMSLO be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2018 I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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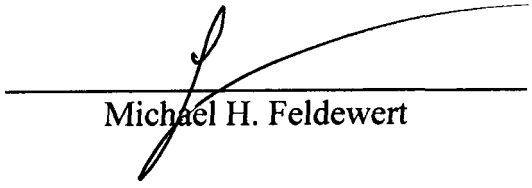

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